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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,845	04/27/2007	Minchu Sonnenschein	0-05-037	9356
42009 7590 10/05/2009 KEVIN D. MCCARTHY ROACH BROWN MCCARTHY & GRUBER, P.C. 424 MAIN STREET 1920 LIBERTY BUILDING BUFFALO, NY 14202				
EXAMINER				
LOW, LINDSAY M				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
10/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,845

Applicant(s)

SONNENSCHIN ET AL.

Examiner

LINDSAY M. LOW

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 6, 7, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 7, 9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to applicant's RCE received on July 29th, 2009.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-2, 6-7, and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the upper level" and "the lower level." There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 6-7, and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnenschein (2001/0056282) in view of Jankowski (2004/0004105), and further in view of Bolanos (5,897,562).

Sonnenschein discloses the same invention including an articulation section, a staple cartridge, a staple firing mechanism, and anvil portion as shown in Fig. 16B.

Sonnenschein's staple cartridge has one or more arrays as shown in Fig. 20A. In addition, the cartridge has a facing surface having an area with slots 141 for the staples to be fired and two bores 142 associated with each array. The anvil (see Fig. 18B and 18C) has two locking screws 121 and a facing surface (in the vicinity of holes 116) for the locking screws 121 to be extended. The cartridge has an upper surface level with two sections located at proximal and distal ends of the cartridge as designated below.

Regarding claim 2, the cartridge is located at the proximal end of the articulation section, while the anvil is located at the distal end.

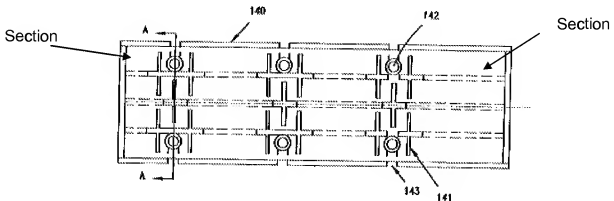
Regarding claim 6, an ultrasound positioning assembly (Fig. 43A) has a recess and a step structure, the step structure being a reflector of ultrasound radiation. The reflector can be on the cartridge (paragraph 0330).

Regarding claim 9, can be seen in Fig. 16B, the articulation section is capable of being over-bent, as the section is flexible.

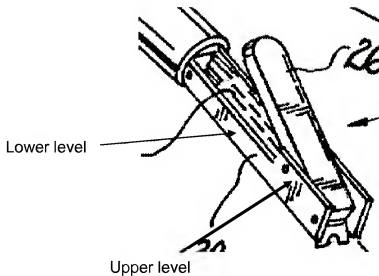
Regarding claim 10, the staple firing mechanism has a plunger, cams (paragraph 0057) and staple pushers (see figures).

Sonnenschein fails to disclose facing surfaces of the cartridge and the anvil being curved. However, Jankowski teaches curved facing surfaces (Fig. 4A and 4B) of both a cartridge and an anvil in a surgical stapler for the purpose of enhancing alignment of the staple cartridge and anvil in transverse and longitudinal directions (abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide curved facing surfaces on Sonnenschein's cartridge and anvil for the purpose of enhancing alignment of the staple cartridge and anvil in

transverse and longitudinal directions. Regarding claim 7, note that Jankowski's cartridge surface is a section of a right circular cylinder. In addition, note that with Sonnenschein's modified curved faces, the surfaces are deemed to slide over one another when the anvil and cartridge are brought close to each other.



The modified device of Sonnenschein fails to disclose a lower level in the cartridge located above the array of staples. However, Bolanos teaches a cartridge 24, 38 having an upper level and a lower level, where the lower level is above the array of staples (see designations below) for the purpose of keeping an anvil 26 aligned with the cartridge as it is brought into close proximity with the staple cartridge. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a lower level to Sonnenschein's staple cartridge for the purpose of aligning the anvil with the cartridge as it is being brought into close proximity with the staple cartridge.



Response to Arguments

6. Applicant's arguments with respect to Sonnenschien have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Held, Kulik, de Salis, Madden, El Gazayerli, Kortenbach, Laufer, and DeVries are cited to show similar inventions.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSAY M. LOW whose telephone number is (571)272-1196. The examiner can normally be reached on Monday thru Friday 7:30 to 5:00.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. M. L./
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721

9/30/2009